

August 11, 1998

**Staff Responses to Questions Raised by  
Congressman Markey's Letter of June 11, 1998**

**Q.1.** In recent testimony before the House Finance and Hazardous Materials Subcommittee, the Fed indicated that it has begun to examine certain privacy-related issues, such as "identity theft," and it noted the "importance of balancing individuals' important privacy interests with the legitimate needs for information by law enforcement agencies, businesses, and others in both the public and private sectors." In the recent NationsBank/ NationsSecurities case, the SEC reported that NationsBank shared with its securities affiliate customer account balance information and lists of customers with maturing CDs for cross-marketing purposes (see relevant citations from the SEC consent decree in this case, which are cited in the attached statements)? Does the Fed believe that the bank's customers should have been given notice and the right to say no before this occurred?

**A.1.** The Board has not addressed the issue of a bank's sharing of information with its affiliates regarding transactions with the bank's own customers. Historically, the Board has generally preferred that banks and their customers establish the private contractual relationships between them, absent clear evidence that the line of reasonableness has been breached. The Board has been concerned that the regulatory fine tuning of those relationships inherently limits innovation and the resulting benefits to both banks and their customers.

**Q.2.** How commonplace do you think the practices described in this case are? Has the Fed ever taken any action to safeguard consumers privacy from this type of cross-marketing?

**A.2.** It is difficult to generalize without hard data, and we are not aware of any statistical data on the prevalence of these practices. In the past, the Federal Reserve has not acted to limit this type of cross-marketing although, in some cases, it may be limited by state law.

**Q.3** A March 30, 1998, letter sent to the General Counsel of the Federal Reserve by the law firms representing Travelers and Citicorp prior to the public announcement of their proposed merger asks if the Fed disagrees with a number of actions their clients plan to undertake in connection with the merger. One item discussed in the letter stated:

**The banks have been engaged in a major ongoing project to develop a demographic and transaction database on customers to market products and services more efficiently.** The Banks and the Insurance Companies would expect to share such information on customers, consistent with the requirements of laws relating to the protection and transfer of customer information, for the purpose of marketing. (emphasis added)

My concern is that there are virtually no laws in place that seem to provide very much protection against transfer of sensitive customer information. Is the Federal Reserve Board at all concerned that the cross-marketing plans in this proposed merger will create new challenges to consumer privacy? Does the Fed believe that Citicorp and Travelers' customers should have the right to know what information these companies are gathering about them? Do you believe they should have the right to prevent such information from being shared between affiliates or with non-affiliates for cross-marketing?

**A.3.** These issues have been raised in the pending application by Travelers to acquire Citicorp, and it would be inappropriate to comment on them while the application is pending. However, in connection with the application, staff has requested information from the applicant regarding its policies for keeping

customer information confidential, sharing such information with affiliates, and seeking customer consent for information sharing.

**Q.4.** In the Cable Act of 1984, Congress prevented cable companies from using personally identifiable customer information for cross-marketing purposes if the consumer objected. In the Telecommunications Act of 1996, we prevented the phone companies from doing the same thing without the prior written approval of the consumer. Now, why should banks and other financial services firms be exempt from the same type of restrictions? What makes them so special that they should be held to a lower standard when it comes to protecting consumer privacy?

**A.4.** The issue of the use of personal information arises in a wide variety of contexts, including medical information, information about financial transactions, and information about nonfinancial retail transactions. While a variety of legislative strictures applies to uses of this information, there does not appear to be any consistent standard or theory that governs the uses of these various types of personal information by the entities possessing the information. Absent a more complete understanding of the uses of all types of personal information to enhance marketing efficiency and the degree of individuals' concern for privacy of different types of information, it is difficult to formulate appropriate standards for various types of information or transactions.

**Q.5.** As you may know, the European Community has issued a directive which may restrict electronic commerce with nations which fail to provide adequate privacy protections for consumers. In light of the apparent shortcomings in existing privacy protections in the U.S., is the Fed at all concerned that we may be unable to meet the EC's privacy standards? If this were to occur, what would be the impact on financial and commercial transactions between the U.S. and Europe?

**A.5.** At this point, the extent to which European privacy standards will affect financial and commercial transactions between the U.S. and Europe is unclear. We understand that the Commerce Department is currently discussing this issue with the European Commission and that individual domestic businesses also are taking steps to address the issue. If the Commerce Department or private sector efforts do not resolve the European concerns, we would expect that affected private sector entities may seek legislation or other appropriate governmental action to address this issue.